

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1313B
PK

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 74-1313

MARTIN F. SOKOLOFF,

Petitioner,

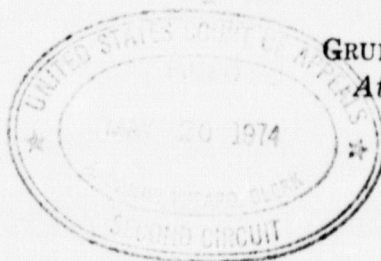
—against—

WILLIAM SAXBE, ATTORNEY GENERAL OF THE
UNITED STATES and JOHN R. BARTELS, JR., AD-
MINISTRATOR, DRUG ENFORCEMENT ADMINIS-
TRATION OF THE DEPARTMENT OF JUSTICE,

Respondents.

ON REVIEW FROM THE DECISION OF THE ADMINISTRATOR
OF THE DRUG ENFORCEMENT ADMINISTRATION,
DEPARTMENT OF JUSTICE.

PETITIONER'S APPENDIX



GRUNEWALD, TURK & GILLEN

Attorneys for Petitioner

16 Court Street

Brooklyn, New York 11241

(212) 858-6464

PAGINATION AS IN ORIGINAL COPY

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CERTIFIED INDEX TO THE RECORD
Case No. 74-1313

The Respondent, submits the following list as the certified index to the record of Case No. 74-1313:

1. One volume of transcript consisting of 26 pages
2. Administrative Law Judge exhibits 1-6 consisting of 8 pages
3. Government exhibits 1 and 2 consisting of 5 pages
4. Respondent exhibits 1-3 consisting of 18 pages
5. Government's Proposed Findings of Fact and Conclusions of Law consisting of 20 pages
6. Memorandum of Law submitted on behalf of Martin F. Sokoloff, M.D., Registrant consisting of 9 pages
7. Memorandum of Law dated November 19, 1973 submitted by the Government regarding the scope of revocation proceedings held under Section 304 of the Controlled Substances Act Upon a Plea of Nolo Contendere, 8 pages
8. Supplemental Memorandum of Law submitted on behalf of Martin F. Sokoloff, M.D., Registrant consisting of 7 pages
9. Decision and Recommendation of Judge Thomas Ricci
10. Federal Register publication, volume 39, pages 4932-33 for Revocation of Certificate of Registration of Martin F. Sokoloff, consisting of 2 pages
11. Petition for Review dated March 8, 1974, consisting of one page
12. Letter dated February 21, 1974, requesting a stay pending review of the Order of John R. Bartels, consisting of one page
13. Letter dated March 5, 1974, in response to the Request for Stay, consisting of one page
14. Letter dated March 1, 1974, renewing Petitioner's request for a Stay of Execution, consisting of two pages.

74-1313

APR 22 1974

CERTIFIED INDEX TO THE SUPPLEMENTAL RECORD
Case No. 74-1313

The Respondent, submits the following list as the Certified Index to the supplemental record of Case No. 74-1313:

1. Petitioner's Original Application for Re-Registration, dated January 16, 1974
2. Letter, Petitioner's Request for a Stay of Execution of the Final Order, dated March 8, 1974
3. Petitioner's Second Application for Re-Registration, dated March 11, 1974
4. Letter, Drug Enforcement Administration, requiring modification of Registration Application, dated March 18, 1974
5. Petitioner's Controlled Substances Registration Certificate, dated April 2, 1974

INDICTMENT

NY 72-114A

Judd, J.

FJB:OGB:mc
F. 4725,418

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

MARTIN SOKOLOFF,

Defendant.

- - - - - X

THE GRAND JURY CHARGES:

INDICTMENT

Crim. No. 72 CR 1215
(T. 21, U.S.C. §841(a)(1),
§842(a)(1) and §829(a))

COUNT ONE

On or about the 8th day of August 1972, within the Eastern District of New York, the defendant, MARTIN SOKOLOFF, knowingly and intentionally did distribute and dispense approximately twenty four (24) capsules of amphetamine sulfate, a Schedule II controlled substance. (Title 21, United States Code, Section 841(a)(1), Section 842(a)(1) and Section 829(a))

COUNT TWO

On or about the 13th day of August 1972, within the Eastern District of New York, the defendant, MARTIN SOKOLOFF, knowingly and intentionally did distribute and dispense approximately seventy-five (75) tablets of amphetamine sulfate, a Schedule II controlled substance. (Title 21 United States Code, Section 841(a)(1), Section 842(a)(1) and Section 829(a))

3a
INDICTMENT

COUNT THREE

On or about the 18th day of August 1972, within the Eastern District of New York the defendant, MARTIN SONOLOFF, knowingly and intentionally did distribute and dispense approximately seventy-four (74) tablets of amphetamine sulfate, a Schedule II controlled substance. (Title 21, United States Code, Section 841(a)(1), Section 842(a)(1) and Section 829(a))

* * * *

A TRUE BILL.

FOREMAN

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

PLEA AND SENTENCING MINUTES

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 - - - - -

5 UNITED STATES OF AMERICA, :

6 - Against - :

72 CR 1215

7 MARTIN SOKOLOFF, :

8 - - - - - :
9 - - - - -

10
11 United States Courthouse
12 Brooklyn, New York

13 June 12, 1973

14 10:00 PM

15
16 B e f o r e :

17 HONORABLE J. TYLER, U. S. D. J. :
18
19
20
21
22
23

24 SHELDON ~~MAN~~ AVERMAN
25 ACTING OFFICIAL COURT REPORTER

A P P E A R A N C E S :

ROBERT A. MORSE, ESQ.
United States Attorney for the
Eastern District of New York

BY: GEORGE BASHIAN, ESQ.
Assistant U. S. Attorney

GRUNEWALD, TURK & GILLEN, ESQS.
Attorneys for Defendant
Martin Sokoloff

BY: MICHAEL GILLEN, ESQ.

* * * * *

1
2 THE CLERK: Criminal cause for trial United
3 States of America versus Martin Sokoloff.

4 THE COURT: As I understand it, Mr. Gillen
5 and Mr. Bashian, subject to certain rather exten-
6 sive conversations which were had off the record,
7 as a result of which this court made certain
8 suggestions and indeed in effect made a sentence
9 bargain for consideration by the defendant, we're
10 ready to proceed to make a plea of nolo contendere
11 to three selected counts in this indictment.

12 MR. GILLEN: The defendant will most
13 respectfully offer a plea of nolo contendere to
14 count one, two and three of this indictment.

15 THE COURT: As I understand it, Mr. Bashian,
16 you early this morning had a chance to discuss
17 this with your superior or superiors in the office
18 and that this nolo contendere as opposed to a guilty
19 plea is acceptable to the prosecution in this case.

20 MR. BASHIAN: That is correct, Your Honor.

21 More specifically, I have spoken with Mr.
22 Edward Boyd, the chief of the Criminal Division
23 and advised him of Mr. Gillen's proposed disposi-
24 tion and it is the position of the United States
25 Attorney's office that we are in accord with

1
2 disposition of this case by pleas of nolo
3 contendere. We have no objections thereto.

4 THE COURT: Dr. Sokoloff, do you understand
5 though Federal Law does allow the entry of what
6 we lawyers call a nolo contendere plea and though
7 it has certain potential consequences which may be
8 more favorable for you, for example, than a straight
9 guilty plea, nevertheless, if this court is to take
10 your nolo contendere plea, I want you to understand
11 that the court still has power to impose sentence
12 upon you and in this instance, after you have been
13 told, I trust after listening to Mr. Gillen in
14 particular and to an extent, Mr. Bashian, about
15 your background in the navy and as a professional
16 man and as a human being, this court suggested a
17 sentence bargain as follows.

18 That if you are to plead nolo contendere
19 to the first three counts, admit you dispensed the
20 amphetamines on the days in question as were cited,
21 this court would commit itself to impose a fine of
22 two hundred and fifty dollars on each count or a
23 total of seven hundred and fifty dollars and would
24 ~~also~~ commit itself to suspend imposition of any
25 jail sentence and place you on unsupervised

1
2 probation for a term of two years, subject to one
3 specific condition; that is, in substance, that
4 the court would order you not to stock any
5 amphetamines in your office, but on those relatively
6 rare occasions when a physician has cause under
7 sound and accented medical principles to prescribe
8 amphetamines, for example, for young children in
9 cases of certain conditions which I need not
10 enumerate for you, I'm sure, that you would
11 prescribe same and not stock the drug in question.

12 Now, understanding that sentence bargain,
13 which I just spilled forth from the lips of this
14 court, are you willing to still plead nolo
15 contendere to each of the first three counts of
16 this nine count indictment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: I take it, sir, that you are
19 a man of mature years somewhere in your forties,
20 as I recall?

21 THE DEFENDANT: Yes.

22 THE COURT: You have a good education. Is
23 there any ambiguity in what I'm suggesting and
24 indeed stating as my bargain on behalf of this
25 court?

1
2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Now, I must assure you that if
4 you are to plead here as suggested in nolo contendere,
5 I think it's wise for this court to state that
6 the court cannot guarantee what a medical society
7 might do once they are aware, if they do become
8 aware, of this nolo contendere plea.

9 This court can make no assurances either
10 with respect to what a federal agency might do. A
11 federal administrative agency, for example, might
12 initiate proceedings against you with respect to
13 these three dispensations of amphetamines. I just
14 don't know what they are liable to do.

15 I can make you no assurances as to what
16 a federal agency might do, any more than what a
17 medical society in this state might do or similarly.
18 I can't make any representations on behalf of the
19 court what a New York State agency, which presum-
20 ably has jurisdiction over drug dispensations in
21 this state might do.

22 You see what I'm trying to tell you?

23 THE DEFENDANT: Yes.

24 THE COURT: I would not want you to think or
25 understand that this court is making any representations

1
2 or giving you any assurance against the possibility
3 that one of those agencies might have an inquiry
4 and might summon you to answer questions and for
5 all I know, they might impose some kind of
6 disciplinary proceeding.

7 I wouldn't know what they might be, but
8 they might, as far as I know, and I can't give you
9 any assurances that nolo contendere plea will pro-
10 tect you against such incidence.

11 Understanding that, the court can make no
12 such recommendations or no such guarantees against
13 such administrative or medical society investiga-
14 tion or conduct. Are you still willing to plead
15 nolo contendere?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Now, I take it that you make
18 no defense and you do not choose to deny these
19 substantial allegations that you dispensed the
20 numbers of tablets which are recited on the days
21 in question: August 6 and August 18, the quantities
22 specifically being twenty-four capsules, seventy-
23 five capsules and --

24 MR. GILLEN: They are tablets.

25 THE COURT: You're right, tablets. You

1
2 make no protestation of denial of those allega-
3 tions whatsoever?

4 THE DEFENDANT: No.

5 THE COURT: As far as I'm concerned,
6 generally, and I'm speaking to counsel now,
7 specifically and most importantly, I can think of
8 no further questions to ask, but if either counsel
9 wishes me to ask any further questions or to state
10 anything by way of information to Dr. Sokoloff, I
11 will be glad to consider it.

12 MR. CILLEN: I have no questions, Your
13 Honor, but I make clear to Dr. Sokoloff that this
14 court can in no way say what an administrative
15 agency could do or a state medical board would do
16 insofar as his physician's license.

17 He fully understands that: however, would
18 the court indicate what it's own feelings are
19 that insofar as the practice of medicine?

20 THE COURT: I would say simply this, that
21 in imposing sentence, this court does not wish
22 to be construed as making any recommendation, for
23 example, as to any action that the state medical
24 board or a medical society should take with
25 respect to or against Dr. Sokoloff.

1
2 As a matter of fact, implicit in one of my
3 conditions, my assumption as a representative of
4 this court, that he will be able to continue his
5 practice and that is why, for example, that I
6 wanted to make it a special condition.

7 I don't want to tell him too deeply how
8 to practice medicine. I assume he will continue
9 to practice medicine.

10 All I ask in that respect is that he agree
11 not to stock amphetamines in his office.

12 MR. GILLEN: Thank you, Your Honor.

13 THE COURT: I think the implications, that
14 of special condition, are clear during the proba-
15 tionary period.

16 Doctor, I am frank to say one of the reasons
17 I was willing to reach this sentence bargain and
18 by the way, at least in comparative sense, the
19 bargain sentence, if you will, is rather lenient.

20 I do not wish to be misconstrued in that
21 respect because, as you may have been told by Mr.
22 Michael Gillen, under the 1970 statute which, under-
23 mines these accusations in this indictment, is a
24 sentencing provision allowing a judge to impose as
25 much as five years in jail or a fine of not to

1
2 exceed fifteen thousand dollars or both.

3 Congress, in its wisdom, in other words,
4 has regarded illegal dispensations of such drugs
5 as amphetamines as a serious offense. I don't
6 quarrel with that.

7 I'm inclined to think, however, on the other
8 hand, that a man with your record and military
9 career as a physician deserves considerable positive
10 effect here. I'm also inclined to agree that or
11 think that though this was a bad mistake on your
12 part, it may well have been in some measure well
13 intended.

14 Beyond that, I also surmise from everything
15 I can see that a great many representable physicians
16 have indulged in the same practice.

17 Ordinarily, under our criminal justice
18 system, the fact that one type of person, such as
19 a physician, happens to get away without being
20 caught is not usually brought into play defensively
21 for a physician, for example, like yourself who was
22 caught, but I do think this kind of consideration
23 becomes relevant to sentence.

24 Also, in my conversations with Michael Gillen,
25 I am satisfied that you will regard this as a bitter

1
2 lesson and that you will go on to the practice of
3 your chosen profession fully aware of the implica-
4 tions of the seriousness of loss; am I correct in
5 that surmise, sir?

6 THE DEFENDANT: Yes, sir.

7 MR. GILLEN: May we have one week to pay
8 the fine, Your Honor?

9 THE COURT: What I'm going to do now is ask,
10 first of all, the clerk of the court to formally
11 take the nolo contendere plea to count one, two
12 and three.

13 Would both the defendant and his counsel
14 agree to waive a reading of those charges?

15 MR. GILLEN: Yes, we will.

16 THE COURT: We'll simply go without a reading.
17 I'll ask the clerk to take his plea to each count.

18 THE CLERK: Martin Sokoloff, do you plead
19 nolo contendere on count one?

20 THE DEFENDANT: Yes.

21 THE CLERK: On count two, do you plead nolo
22 contendere?

23 THE DEFENDANT: Yes.

24 THE CLERK: Do you plead nolo contendere on
25 count three?

1
2 THE DEFENDANT: Yes.

3 THE CLERK: Pleas of nolo contendere of the
4 first three counts of this indictment are accepted
5 to cover the entire indictment, 72 CR 1215.

6 May I understand from government counsel
7 and defense counsel that they are willing to pro-
8 ceed to sentence as indicated without a pre-
9 sentence report being required or ordered?

10 MR. GILLEN: On behalf of the defendant,
11 we are willing to so proceed.

12 MR. BASHIAN: The government is so ready to
13 proceed, Your Honor.

14 THE COURT: Even though you know what the
15 sentence is going to be because of this so-called
16 bargain plea and sentence, Dr. Sokoloff, is there
17 anything you wish to say on the subject prior to
18 the formal imposition of sentence by this court?

19 THE DEFENDANT: No.

20 THE COURT: This court will formally impose
21 sentence --

22 MR. GILLEN: I have nothing to say, just on
23 the elocution.

24 THE COURT: You already said very much
25 indeed which I think was very favorable to the

1
2 interest of your client. You explained his back-
3 ground. That should be noted on the record.

4 This court imposes sentence upon you as
5 follows.

6 Martin Sokoloff, with respect to each of
7 these three counts, the court suspends imposition
8 of sentence and places you on probation for a
9 period of two years. This is to be deemed unsuper-
10 vised probation.

11 Each of the sentences is to be deemed con-
12 current.

13 There is also imposed a special condition of
14 probation to wit: that you will agree not to stock
15 amphetamine tablets within your place of practicing
16 medicine during the period of your probation. This
17 is not to say, of course, that as a physician
18 cannot in an appropriate and acceptable circumstance
19 prescribe amphetamines to a patient of yours. The
20 point being, of course, as I indicate, that you not
21 stock the tablets or drug within the confines of
22 your office wherever it may be, presently located
23 or some other location.

24 Further, in respect to each of these counts,
25 I impose a committed fine of two hundred fifty

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2 dollars for count one, count two and three or a
3 total of seven hundred fifty dollars. I direct
4 that the total amount of the fine be paid within
5 one week of today, or in other words, no later
6 than four o'clock in the afternoon of the day of
7 June 19, 1973.

8 MR. BASHIAN: Would there be any provision
9 in the probation? In other words, to determine
10 whether there is compliance with the condition?

11 THE COURT: Let me make that clear without
12 any debate. I have directed that the supervision
13 be unsupervised in the formal sense; however, the
14 probation arm of this court will have the power
15 at any time to make suitable inquiries of either
16 Michael Gillen, Esquire, as attorney for Dr. Sokoloff
17 or Dr. Sokoloff himself, including the right to
18 look at records if required to, to see if the
19 special conditions are being complied with.

20 I don't think I made it clear even though
21 this probation is unsupervised, that it should be
22 deemed to be in compliance with the standing pro-
23 bation order of this court. That, I think, I
24 neglected to say. I think that covers it,
25 generally.

1
2 MR. BASHIAN: Yes.

3 MR. GILLEN: Yes.

4 THE COURT: I will entertain a motion of the
5 defense to dismiss the open counts and hearing no
6 objection from the prosecution, that motion is
7 granted.

8 MR. GILLEN: Thank you, Your Honor.

9 THE COURT: Doctor, you look like a decent
10 fellow, except for this horrible affair. As long
11 as you are prepared to accept it as a bitter
12 lesson and I'm sure you'll not do this thing again,
13 I'm confident you will continue your days as an
14 effective practitioner and I wish you well in that
15 regard.

16 THE DEFENDANT: Thank you, sir.

17 * * * *

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25

United States District Court
FOR THE

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

EASTERN DISTRICT OF NEW YORK

JUL 18 1973

UNITED STATES OF AMERICA

v.

MARTIN SOKOLOFF

No.

TIME A.M.
P.M.
72 CR-1215

FILED

On this 18th day of JULY, 1973, came the attorney for the government and
the defendant appeared in person and

IT IS ADJUDGED that the defendant upon his plea of' nolo contendere and the court being satisfied there is a factual basis for the plea

has been convicted of the offense of violating T-21, U.S.Code, Secs. 841(a)(1) 842(a)(1) and 829(a) in that on or about and between Aug. 8 and Aug. 18, 1972, the defendant, knowingly and intentionally, did distribute and dispense numerous capsules of amphetamine sulfate, a Schedule II controlled substance

as charged' in counts 1, 2 & 3

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED' imposition of sentence is suspended and the defendant is placed on unsupervised probation for a period of 2 years on each of counts 1, 2 & 3, to run concurrently, subject to the standard conditions of probation as set forth in the standing order of this court dated October 13, 1964. Defendant is to pay a fine of \$250.00 on each of counts 1, 2 & 3 for a total fine of \$750.00 to be paid within one week - by June 19, 1973 at 4:00 P.M. On motion of Asst. U.S. Attorney Bashian counts 4 to 9 inclusive are dismissed. Special condition of probation is that the defendant will not stock any amphetamines during the period of his probation and that the probation office of this Court will have the right to inspect his office and records during normal professional hours to ascertain compliance with said condition.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

This Judgment and Order of Probation amends a Judgment and Order of Probation heretofore made and filed on the 12th day of June 1973.

James R. Tyler
United States District Judge.

Clerk.



21a

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
Washington, D.C. 20537

SEP 24 1973

IN THE MATTER OF

Martin F. Sokoloff, M.D.
103-11 68th Drive
Forest Hills, New York 11375

ORDER TO SHOW CAUSE

Pursuant to Section 304 of the Controlled Substances Act (21 U.S.C. 824),

NOTICE is hereby given to afford you an opportunity to Show Cause in Room 1210 at the Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C., on the 24th day of October, 1973, or as soon thereafter as this matter may be heard, as to why the Drug Enforcement Administration registration AS0725828 issued to you pursuant to Section 303 of the Controlled Substances Act (21 U.S.C. 823) should not be revoked for the reason that on June 12, 1973, in the United States District Court for the Eastern District of New York, you pleaded nolo contendere to three counts of knowingly and intentionally distributing and dispensing certain Schedule II controlled substances in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 842(a)(1) and Section 829(a).

The following procedures are available to you in this matter:

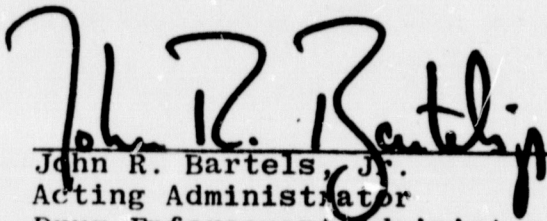
1. Within 30 days after the date of receipt of this Order to Show Cause you may file with the Administrator of the Drug Enforcement Administration a written request for a hearing in the form set forth in Section 316.47, Title 21, Chapter 2, Code of Federal Regulations. (See Sections 301.54(a) and 301.54(b).)
2. Within 30 days after the date of receipt of this Order to Show Cause, you may file with the Administrator a waiver of hearing together with a written statement regarding your position on the matters of fact and law involved. (See Section 301.54(c).)

ORDER TO SHOW CAUSE

2.

3. Should you decline to file a request for a hearing or should you so file and fail to appear at the hearing, you shall be deemed to have waived the hearing and the Administrator may cancel the hearing, if scheduled. (See Sections 301.54(d) and 301.54(e).)

Correspondence in this matter should be directed to the Administrator of the Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537, Attention: Hearing Clerk, Office of Chief Counsel.


John R. Bartels, Jr.
Acting Administrator
Drug Enforcement Administration

October 19, 1973

Mr. Charles Dullea
Director, Office of
Administrative Law Judges
U.S. Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

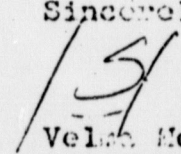
Dear Mr. Dullea:

The Drug Enforcement Administration will be conducting an administrative hearing pursuant to Section 505 of the Controlled Substances Act of 1970 (P.L. 91-513). The purpose of this hearing is to determine whether or not a doctor's registration should be revoked. This hearing is expected to commence November 15, 1973, and last one day.

We anticipate having another hearing to determine whether or not a doctor's registration should be revoked on December 5, 1973.

Inasmuch as this Administration does not have a regularly assigned Administrative Law Judge, it is requested that an Administrative Law Judge be appointed by the Civil Service Commission on a reimbursement basis pursuant to Section 930 of the Civil Service Commission Regulations.

Sincerely,


Velma Mondin
Hearing Assistant

ALS Exhibit 5



UNITED STATES CIVIL SERVICE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

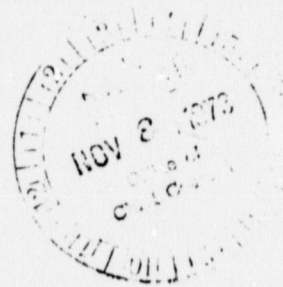
WASHINGTON, D.C. 20415

November 6, 1973

IN REPLY PLEASE REFER TO

YOUR REFERENCE

Miss Velma Mondin
Hearing Assistant
U.S. Department of Justice
Drug Enforcement Administration
Washington, D.C. 20530



Dear Miss Mondin:

This is in response to your recent request for the loan of an Administrative Law Judge to conduct two hearings pursuant to section 505 of the Controlled Substances Act of 1970 (P.L. 91-513) in Washington, D.C., on November 15 and December 5, 1973.

The Commission, with the consent of the National Labor Relations Board has selected Administrative Law Judge Thomas A. Ricci to conduct the hearings. The telephone number is 254-9533.

The temporary use of the services of Judge Ricci will begin immediately and continue for a period not to exceed 120 days on an intermittent and reimbursable basis in order to complete action on the aforementioned cases.

A copy of each Notification of Personnel Action covering this loan is to be submitted to this office and to the National Labor Relations Board after the effective dates thereof. This letter and Civil Service Regulation 930.213 should be cited as the authority.

Sincerely yours,

Charles J. Dullea

Charles J. Dullea
Director

P.S. Please see to it that Judge Ricci receives the necessary back-up material as soon as possible.

ALJ Exhibit 6



1883-1973

MERIT PRINCIPLES ASSURE
QUALITY AND EQUAL OPPORTUNITY

ADMINISTRATIVE HEARING MINUTES

UNITED STATES DEPARTMENT OF THE TREASURY
 DRUG ENFORCEMENT ADMINISTRATION

----- x
 :
 In the Matter of: :
 :
 MARTIN F. SOKOLOFF, M.D. : Docket No. 73-22
 :
 103-11 68th Drive :
 Forest Hills, New York 11375 :
 :
 ----- x

1405 Eye Street
 Room 1211
 Washington, D. C.

Monday, November 19, 1973
 10:29 o'clock a.m.

BEFORE:

HON. THOMAS A. RICCI
 Administrative Law Judge

APPEARANCES:

ALLYN CARNAM, Esq., 1405 Eye Street, NW, Washington, D.C.
 Attorney for Drug Enforcement Administration.

MICHAEL J. GILLEN, Esq., 16 Court Street, Brooklyn,
 New York 11241; Attorney for Dr. Sokoloff.

Also Present:

ROBERT J. ROSTHAL, Esq., Deputy Chief Counsel, Drug
 Enforcement Administration.

I N D E XADMINISTRATIVE LAW JUDGE EX.FOR IDENT.IN EV.

- 1 Facsimile of Dr. Sokoloff's
current registration, dated
2/27/73, No. AS0725828
- 2 Show cause order, dated
9/24/73
- 3 Notice of Appearance, dated
10/15/73
- 4 Request for Hearing signed by
Dr. Sokoloff
- 5 Letter request by the Drug
Enforcement Administration to the
Director of the Office of Adminis-
trative Judges, dated 10/19/73
- 6 Letter from the Director of the
Office of Administrative Judges
dated 11/6/73

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5	9
5	9
5	9
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GOVERNMENT'S EX.

- 1 Indictment of nine counts in the
U. S. District Court for the
Eastern District of New York
- 2 Order of judgment assigned by
Judge Tyler

6	9
7	9

REGISTRANT'S EX.

- 1 Plea minutes of Dr. Sokoloff
where nolo contendere plea was
entered before Judge Tyler
- 2 Receipt for fine paid by
Dr. Sokoloff
- 3 Photostats of three patient cards

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12	21
13	25

P R O C E E D I N G S

JUDGE RICCI: This is a formal hearing pursuant to the Administrative Procedures Act, in connection with a proceeding instituted by the United States Department of Justice, Drug Enforcement Administration, against Dr. Martin Sokoloff of New York City.

I am the administrative law judge assigned to the case. My name is Thomas A. Ricci, R-i-c-c-i. Any formal documents in connection with this proceeding that have to be served on me or that anyone wishes to serve on me now or after the close of the hearing should be addressed to the Judges Division of the National Labor Relations Board, 1231 15th Street, Northwest, Washington, D. C.

Mr. Carnam, will you please enter your appearance on the record and your office address.

MR. CARNAM: Yes, Your Honor. Allyn Carnam, A-l-l-y-n, C-a-r-n-a-m, and Robert J. Rosthal, Deputy Chief Counsel, R-o-s-t-h-a-l. My office address is 1405 Eye Street, Northwest, Washington, D. C.

JUDGE RICCI: Mr. Gillen, will you please enter your appearance on the record and your office address.

MR. GILLEN: Grunewald, Turk & Gillen, G-r-u-n-e-w-a-l-d, T-u-r-k, G-i-l-l-e-n, 16 Court Street, C-o-u-r-t, Brooklyn, New York 11241.

JUDGE RICCI: There is no use asking if anyone

1 else wishes to enter an appearance. There is nobody else
2 here.

3 Mr. Carnam, I have studied the documents that
4 were sent to me informally, an order to show cause and a
5 statement signed by the doctor that appears to be a response.
6 Yours is the primary burden of proving something. Would you
7 care to make a statement of position to start with, your
8 theory or your intent. It might serve a good purpose for
9 anyone reading this transcript cold later.

10 MR. CARNAM: Yes, Your Honor. I would like to do
11 two things first, Your Honor. First of all, I would like to
12 mark for identification a number of documents which of
13 course would serve as the basis for this hearing, originals
14 of many and copies of others.

15 These documents, Your Honor, would be marked for
16 identification pursuant to 316.54, subsection (e) of Title
17 21 of the Code of Federal Regulations.

18 The first document, Your Honor, would be a
19 facsimile of Dr. Scholoff's current registration. Under
20 Section 302, Dr. Scholoff was registered with the then
21 Bureau of Narcotics and Dangerous Drugs--now the Drug
22 Enforcement Administration--as a practitioner to dispense
23 controlled drugs listed in Schedules 2, 3, 4, and 5. This
24 registration was issued on February 27, 1973, Registration
25 No. AS0725828.

1 JUDGE RICCI: If you would give that to the
2 reporter, he could make it Government No. 1.

3 MR. CARNAM: I was going to move that they be
4 marked Administrative Law Judge No. 1, Your Honor.

5 JUDGE RICCI: They are your exhibits, not mine.
6 If it will make you happy, do it that way.

7 I take it here, as in other proceedings, it would
8 be a good idea if we give the reporter the original of
9 your exhibits and a carbon.

10 MR. CARNAM: The way I would like to proceed, if
11 Your Honor had no objection, is have the Hearing Clerk be
12 the custodian of the exhibits, the originals, and
13 Mr. Gillen of course be furnished copies.

14 JUDGE RICCI: Fine.

15 MR. GILLEN: No objection.

16 JUDGE RICCI: Very fine.

17 [Document referred to marked Administrative Law
18 Judge Exhibit No. 1 for Identification, of this date.]

19 MR. CARNAM: The second document, Your Honor,
20 would be the order to show cause, to which Your Honor has
21 already alluded. The order to show cause was issued on
22 September 24, 1973, indicating an intent upon the Drug
23 Enforcement Administration to move for the revocation of
24 Dr. Sokoloff's BNDD registration, ALJ 1, for the reason that
25 on June 12, 1973, the respondent entered a plea of nolo

1 contendere to certain violations, alleged violations, of the
2 Controlled Substances Act.

3 JUDGE RICCI: Fine.

4 [Document referred to marked Administrative Law
5 Judge Exhibit No. 2 for Identification, of this date.]

6 MR. CARNAM: The next document, Your Honor, would
7 be ALJ 3 and ALJ 4, would be Notice of Appearance and
8 Written Request for Hearing submitted by counsel for
9 Dr. Sokoloff, Mr. Gillen. ALJ 3, Your Honor, is the
10 Notice of Appearance dated October 15, 1973. And ALJ 4 is
11 the Request for Hearing signed by Dr. Sokoloff in which he
12 sets forth his position on the matters of law which are
13 involved in this hearing.

14 [Documents referred to marked Administrative
15 Law Judge Exhibits 3 and 4 respectively for Identification,
16 of this date.]

17 MR. CARNAM: The next exhibit, Your Honor,
18 will be the request made by the Drug Enforcement
19 Administration to the Director of the Office of Administra-
20 tive Hearings to obtain the appointment of an administrative
21 law judge to preside in this matter. That letter is dated
22 October 19, 1973, and signed by our hearing assistant.

23 [Document referred to marked Administrative Law
24 Judge Exhibit No. 5 for Identification, of this date.]

25 MR. CARNAM: And the final Administrative Law

1 Judge Exhibit, Your Honor, would be ALJ 6, a response from
2 the Director of the Office of Administrative Law Judges,
3 indicating the appointment of Your Honor to preside over this
4 matter. That letter is dated November 6, 1973.

5 [Document referred to marked Administrative Law
6 Judge Exhibit No. 6 for Identification, of this date.]

7 MR. CARNAM: The final two exhibits, Your Honor,
8 I wish to have marked Government's exhibits because they
9 are part of the Government's case in chief. Again these
10 exhibits would only be marked for identification at this
11 time.

12 The first exhibit, Government's Exhibit 1, would
13 be the indictment handed down in the United States District
14 Court for the Eastern District of New York, charging
15 Dr. Sokoloff with, I believe, nine counts of violating
16 Section 801(a)(1) of Title 21 of the Controlled Substances
17 Act, as well as a number of other sections of the Controlled
18 Substances Act. And that indictment was returned, as I
19 indicated, in the United States District Court for the
20 Eastern District of New York.

21 [Document referred to marked Government's
22 Exhibit 1 for Identification, of this date.]

23 MR. CARNAM: The next exhibit, Your Honor,
24 Government's Exhibit 2, would be the order of judgment
25 assigned by Judge Tyler, which was the culmination of the

1 indictment. The order of judgment indicates that
2 Dr. Sokoloff entered a plea of nolo contendere to counts 1,
3 2, and 3 of the indictment already introduced or already
4 marked for identification. And, as indicated on the order
5 of judgment, upon receipt of the plea of nolo contendere
6 Judge Tyler did adjudge the defendant guilty as charged
7 and convicted.

8 [Document referred to marked Government's
9 Exhibit 2 for Identification, of this date.]

10 MR. CARMAN: As indicated in Mr. Gillen's request
11 for a hearing, there seems to be an issue which I believe now
12 is joined, an issue of law, as Your Honor characterized it
13 at the outset. And that issue, Your Honor, I think can be
14 articulated as follows.

15 The scope of the proceedings held under Section
16 304(a)--the order to show cause, as I previously stated,
17 was issued under Section 304, evidencing an intent upon the
18 part of the Drug Enforcement Administration to move for the
19 revocation of Dr. Sokoloff's registration previously issued.

20 Section 304, Your Honor, provides and gives the
21 Drug Enforcement Administration power to suspend or revoke
22 registrations issued under Section 303 upon one of three
23 findings being made by the Attorney General. One of those
24 findings, Your Honor, as set forth in 304(a)(2) is as
25 follows: Has the registrant been convicted of a felony

1 under this title, that is the Controlled Substances Act, or
2 Title 3, which is the Controlled Substances Import and Export
3 Act, or any other law of the United States or of any state
4 relating to any substance defined in this title as a
5 controlled substance?

6 It is the contention of the Government, Your Honor,
7 as supported by its memorandum of authorities, previously
8 submitted, that the plea of nolo contendere does properly
9 furnish the jurisdictional basis of this hearing: That is,
10 a judgment of conviction.

11 Based upon the authority that the Government has
12 cited, Your Honor, we feel that once an individual, a
13 defendant, pleads nolo contendere a judgment of conviction
14 automatically follows. And that judgment of conviction,
15 Your Honor, as opposed to a finding of guilty, is sufficient
16 to provide for the institution of proceedings set forth in
17 Section 304.

18 We would further suggest, Your Honor, and point
19 out that as set forth in the order of judgment and as Judge
20 Tyler signed the order of judgment, in fact Dr. Sokoloff
21 was adjudicated to be guilty as charged in counts 1, 2, and
22 3. So, although we do not feel it is necessary for
23 provisions of Section 304(a)(2), we do believe it is the
24 position of the Government that Dr. Sokoloff was in fact
25 adjudicated guilty. But any circumstances, Your Honor, a

1 judgment of conviction was certainly made upon the
2 submission of the plea to Judge Tyler. And it is upon that
3 judgment of conviction that the Government believes that it
4 can move under Section 304(a).

5 JUDGE RICCI: The first question, if I may
6 suggest, Mr. Gillen, I have these eight exhibits. Is there
7 any objection to receiving them into evidence?

8 MR. GILLEN: None whatsoever, Your Honor.

9 JUDGE RICCI: I receive into evidence what has been
10 marked one through six as Administrative Law Judge Exhibits,
11 and one and two as Government Exhibits.

12 [Administrative Law Judge Exhibits 1 through 6
13 for Identification and Government's Exhibits 1 and 2 for
14 Identification were received in evidence.]

15 JUDGE RICCI: I note, Mr. Carnam, as I was looking
16 at your memorandum of law that you were kind enough to give
17 me this morning, that you list a great number of citations
18 in an attachment called references.

19 MR. CARNAM: That is correct, Your Honor.

20 JUDGE RICCI: I assume it is your contention that
21 these citations support your conclusion.

22 MR. CARNAM: Oh, erly it is our contention, Your
23 Honor, that they do support--

24 JUDGE RICCI: Your memo does not argue these
25 cases and why they support your conclusion. It is an

1 unusual form of brief. But I will read the cases myself.

2 Mr. Carnam, it occurs to me that perhaps the next
3 thing you intended to say was, "The Government rests." You
4 are familiar with that phrase in trials?

5 MR. CARNAM: Yes, Your Honor, I am familiar with
6 it.

7 JUDGE RICCI: That if no one said anything else in
8 this courtroom, if Mr. Gillen said, "They have not proved
9 a case; I move to quash the order to show cause. I am
10 going home," you would say, "I am happy. I close the
11 record. Ricci, write a recommendation," you rest.

12 Is that a correct appraisal of your position?
13 I ask you just so that Mr. Gillen can fully appreciate
14 where he sits and what your position is.

15 MR. CARNAM: Your Honor, again the Government
16 will have no problem going that route. I would just
17 respectfully point out that I think Mr. Gillen is of the
18 belief that this is to be a pre-hearing conference as
19 opposed to a hearing. The Government, if this were to be
20 a hearing, would of course add no more to its case in
21 chief, as Your Honor has quite properly pointed out.

22 JUDGE RICCI: I appreciate that, after we hear
23 from the respondent or whatever the doctor in this position
24 would be called in this type of hearing, the Government as
25 carrying the primary burden would have a right of rebuttal

1 depending on what is received in defense. But I am speaking
2 substantively. What this hearing that is now being recorded
3 is called, pre-hearing, hearing, trial, substantively the
4 Government has put in its entire case to cancel this
5 registration.

6 MR. CARNAM: That is correct, Your Honor.

7 JUDGE RICCI: I wanted to be sure exactly what
8 we are doing, Mr. Gillen. I will be glad to hear you.

9 MR. GILLEN: Thank you, Your Honor. I very much
10 appreciate Your Honor bringing this to the point.

11 Your Honor, preliminarily I would like to offer
12 into evidence a copy of the plea minutes of Dr. Sokoloff
13 where the nolo contendere plea was entered before Judge
14 Tyler in the Eastern District.

15 JUDGE RICCI: Is this a document that in the
16 District Court proceeding was entered in some fashion?

17 MR. GILLEN: Yes, sir. This is the minutes of the
18 plea.

19 JUDGE RICCI: Wonderful. What do you want to call
20 your exhibits? I do not want to call the doctor a
21 respondent. It suggests perhaps more than it should. In
22 any event, call him the party in interest--

23 MR. GILLEN: Registrant's Exhibit 1.

24 JUDGE RICCI: Registrant's Exhibit No. 1, good.
25 Mark it, please.

1 [Document referred to marked Registrant's
2 Exhibit 1 for Identification, of this date.]

3 MR. GILLEN: I would also like to put in as
4 Registrant's Exhibit 2 the receipt to the fine that was paid
5 by Dr. Sokoloff.

6 [Document referred to marked Registrant's
7 Exhibit 2 for Identification, of this date.]

8 MR. GILLEN: Also, Your Honor, I have photostats
9 of three patient cards of Dr. Sokoloff. I do not have the
10 originals. These are in the Government's possession.

11 JUDGE RICCI: What are patient cards? May I look
12 so I will understand better.

13 MR. GILLEN: Yes [handing].

14 JUDGE RICCI: Do you have copies of these
15 exhibits?

16 MR. CARNAM: Your Honor, the Government did not--
17 the originals, Your Honor, are in the possession of the
18 United States Attorney, I believe.

19 JUDGE RICCI: You have copies of what Mr. Gillen
20 just brought into the room?

21 MR. CARNAM: I do, Your Honor.

22 JUDGE RICCI: Good. I only ask so that as
23 Mr. Gillen talks you will understand what he is explaining.
24 Anyone who reads the record later, having these documents
25 before him, will understand the words that now Mr. Gillen

1 will put into this record.

2 MR. CARNAM: May we mark those for identification
3 first, Your Honor?

4 JUDGE RICCI: If you will staple these two pages
5 together and mark them Registrant's Exhibit No. 3.

6 [Documents referred to marked Registrant's
7 Exhibit No. 3 for Identification, of this date.]

8 JUDGE RICCI: We all have copies of Exhibit No. 3.
9 Go ahead, Mr. Gillen.

10 MR. GILLEN: Your Honor, what these cards are, I
11 will have to go into a slight historical background of the
12 basis of the indictment. It appears that three agents of
13 the Bureau of Narcotics and Dangerous Drugs on different
14 dates named in the indictment presented themselves as
15 patients to my client, the registrant, Dr. Sokoloff.
16 Dr. Sokoloff then made out these cards as records of
17 patients that he treated in each individual instance. There
18 are three separate agents, and the dates are reflected when
19 the various visits were had by the agents.

20 Our position is the agents, as reflected in those
21 cards, were examined by the doctor, were weighed, their
22 blood pressure was taken, and there was a general
23 examination. And he then, in line with his professional
24 duties, dispensed those pills that he was ultimately charged
25 with.

1 These cards, Your Honor, were seized by the United
2 States Attorney's Office pursuant to a search warrant
3 which was issued prior to the indictment of Dr. Sokoloff.
4 The photostats I get actually come from the files of the
5 United States Attorney. They have the originals.

6 JUDGE RICCI: I will tell you this, Mr. Gillen:
7 You have brought these copies; unless the Government
8 disputes with you the reliability of these photostats, I
9 would assume that they are correct. You are a member of
10 Bar; you told me this, and I believe you.

11 MR. GILLEN: Yes.

12 JUDGE RICCI: If they think they are inaccurately
13 photostated or something, they who have access to the
14 originals will say so. Whether or not they are relevant to
15 this case is a totally different question.

16 I might also add I think it fair to tell you,
17 Mr. Gillen, simply because I have held hearings under the
18 Administrative Procedures Act for many years, you are
19 stating a number of facts, you are the attorney speaking in
20 connection with an exhibit you offer. In my considered
21 judgment, no factual assertion of yours is the equivalent
22 of proof of a fact.

23 MR. GILLEN: The only reason I do that, Your
24 Honor, is to explain the exhibits, because by themselves
25 they mean nothing. In fact, that is what I want here, sir;

1 I want an evidentiary hearing where I can put my proof on
2 the stand.

3 JUDGE RICCI: I have started by listening to you
4 and taking what evidence or proof you wish to offer, first
5 to understand what it is and then to appraise its
6 admissibility. That will depend upon conflicting contentions.
7 But it is only fair to tell you these many assertions that
8 you are making are not proof, evidence, at all.

9 MR. GILLEN: I understand that, sir. It was
10 just explanatory of the exhibit.

11 Also there is in evidence a copy of the
12 indictment which is Government's Exhibit 1, which is marked
13 in evidence. That I assume would be evidence, sir, for the
14 purpose of the hearing.

15 JUDGE RICCI: It proves that an indictment so
16 reading was entered in the Eastern District of New York.

17 MR. GILLEN: I would refer Your Honor most
18 respectfully to that indictment and the language of the
19 indictment where in each and every count Dr. Sokoloff is
20 charged with knowingly and intentionally distributing and
21 dispensing these amphetamines. Nowhere in this indictment
22 are the words "in violation of law" or "unlawfully used."
23 There are citations of certain sections appended at the end
24 of each phrase of the indictment itself. But nowhere in
25 this indictment are the words "in violation of law" or

1 "unlawfully" entered. And that is in the nine counts.

2 I would most respectfully submit that a plea of
3 nolo contendere was entered in this case, which is not
4 dispositive of any question that would be brought forth at
5 this hearing on his license as a registrant of the Bureau of
6 Narcotics and Dangerous Drugs. I have not submitted a
7 memorandum to Your Honor; I will not belabor my point. But
8 our position succinctly is that nolo contendere means,
9 "So what? I am not going to contest it," or whatever the
10 literal translation is, that is what it means. It is not
11 an admission to the allegations charged in the indictment.
12 It is not a plea of guilty, although one can be sentenced
13 on it as a plea of guilty or fined, as was the case here.

14 This plea of nolo contendere, when Your Honor
15 will read the minutes, you will find that this plea was as
16 a result of plea bargaining, which is somewhat unusual in
17 the federal courts. At one time, Your Honor, I think many
18 of us practicing in the federal courts never heard of
19 plea bargaining. But today in New York it does happen. And
20 if Your Honor will read this indictment or the plea
21 minutes, you will find that prior to the entry of this
22 plea, there was a discussion before the bench with Judge
23 Tyler in which Mr. Eashian of the U. S. Attorney's Office,
24 the assistant assigned to the prosecution of the case, took
25 part.

1 The Government offered a plea of nolo contendere
2 in this case. Quite frankly I approached the judge and I
3 said to him, "Your Honor, a plea of nolo contendere would be
4 acceptable in the event my client not be incarcerated," and
5 we had this discussion.

6 Judge Tyler on the record offered a fine of \$250
7 on each of three counts in the event a plea of nolo contendere
8 was taken, as was offered by the Government. Such plea was
9 taken. I might point out that I believe the permissible
10 fine in this particular instance was, I think, \$5,000 or
11 something of that nature.

12 In any event, Judge Tyler I think put on the
13 record what he thought of the case insofar as the fine that
14 was imposed. He also put into the record a special
15 condition of an unsupervised probation that Dr. Sokoloff not
16 stock amphetamines but that he be permitted to dispense them
17 pursuant to prescription when required.

18 My learned opponent has said that there was a
19 finding of guilty by Judge Tyler in the judgment of
20 commitment. I fail to find a finding myself in a reading of
21 it. It says there in the commitment a factual basis for the
22 plea of nolo contendere. I think historically nolo
23 contendere pleas have been entered in many types of cases.
24 They have been entered to avoid litigation. They have been
25 entered to avoid public censure. They have been entered for

1 a host of reasons. But nobody has ever called a nolo
2 contendere a plea of guilty, although most of the cases do
3 hold you can be sentenced and you can be fined. But
4 nobody, no case, not the Supreme Court or no district court,
5 to my knowledge, has ever said that nolo contendere was a
6 plea of guilty.

7 I most respectfully submit that all of the case
8 law, federal case law, the district courts, the circuit
9 courts throughout, and the United States Supreme Court,
10 have said that when a nolo contendere plea is entered, it
11 is not an admission to all the allegations. But in a civil
12 matter--and I most respectfully submit, Your Honor, that
13 this is a civil proceeding as opposed to a criminal
14 proceeding--that a person may try any and all allegations
15 contained in an indictment to which a nolo plea was
16 entered. The nolo plea is not dispositive of the issue.

17 To be quite frank, Your Honor, and again this is
18 not evidence but this is from a lawyer's standpoint, I will
19 litigate any time before an administrative body or civil
20 court in lieu of litigating, trying a case, before a federal
21 district court with the power of imprisonment. And I think
22 any lawyer that does not do that better look to himself.

23 And I most respectfully submit that in this
24 instance here, from the Government's own indictment--and I
25 do apologize for again referring to these three cards--that

1 we will prove before Your Honor in an evidentiary hearing
2 that these agents came to this doctor, represented themselves
3 as patients; one of them actually lost weight, according
4 to these cards. And there are notations on these cards;
5 when the agents come back too many times, the doctor put,
6 "No more pills for three weeks."

7 That is the reason that the Government did not
8 want to try this case and offered a nolo contendere.
9 Because I believe, Your Honor, that a full evidentiary
10 hearing is mandated and is demanded by the facts in this
11 case. If these agents wanted to charge a doctor or a
12 lawyer or anybody else for criminal activity, then catch
13 them in it. Do not go in and pose as a client or pose as a
14 patient and suck the man in. And I would say on a hearing
15 we will have a very sharp question of credibility as
16 between the doctor and as between the agents, in a full-
17 blown hearing.

18 I most respectfully submit that the Government's
19 position that they can just remove the doctor's registration
20 by saying to this Court there was a plea of nolo contendere--
21 that position of the Government is untenable. There are
22 forums again which a doctor--I believe it is the State
23 Education Department in New York--will ultimately have to
24 appear before and argue his case. And before that forum, a
25 plea of nolo contendere--his very licensing agency--will not

1 be dispositive. A hearing will be required.

2 I most respectfully submit here that the
3 Government cannot take away a man's lifetime work, which is
4 in fact what would happen here. Because if he is denied
5 this registration for all these drugs, in effect he cannot
6 practice; at least, I am so informed. I am not a physician.
7 I am not a medical expert. But I can appreciate that. If
8 a doctor cannot prescribe morphine and other types of
9 drugs and those miracle drugs for people with heart attacks,
10 broken legs, broken heads, whatever, he cannot practice.
11 The Government now has gotten to the point where codeine,
12 I understand, cough medicine, which as kids you used to be
13 able to go in, your mother would send you to the store and
14 you would buy it off the shelf, is now controlled by the
15 Bureau of Narcotics and Dangerous Drugs.

16 I understand vitamins are controlled by the
17 Bureau of Narcotics and Dangerous Drugs. I am no expert in
18 this field, but this is what I have been informed.

19 So, we have an instance of the Government with
20 an all-reaching and all-encompassing control, which grows
21 and grows and grows, wants to turn around and deny a full
22 and fair hearing on a registration. I most respectfully
23 submit that that would be solely unjust for such a result.

24 We do want the hearing. We are not afraid of the
25 hearing. We would like to see all of the Government's

1 agents in the case, and I would produce my client.

2 JUDGE RICCI: Now, one step at a time. You
3 gentlemen have seen the Registrant's Exhibits 1, 2, and 3.
4 Is there any objection to receiving them in evidence?

5 MR. CARNAM: Not to 1 and 2, but there is to 3,
6 Your Honor.

7 JUDGE RICCI: I receive into evidence the
8 Registrant's Exhibits 1 and 2.

9 [Registrant's Exhibits 1 and 2 for Identification
10 were received in evidence.]

11 JUDGE RICCI: As we get to 3, Mr. Gillen, if I may
12 ask you, you said, "I do want the hearing." I think that
13 is one of the last phrases you used.

14 MR. GILLEN: That is correct.

15 JUDGE RICCI: That is what we are here for. I do
16 not quite understand you. I go back to the beginning of my
17 statement to you. The Government has rested. It has put
18 in its total case which, in its judgment, suffices to warrant
19 cancellation of the registration.

20 I turned to you, what you have in opposition. You
21 have given two exhibits that have been received, a third
22 that I am still looking at. Let me hold that momentarily
23 and ask you--I am still taking a defense--What else do you
24 have to offer in evidence to knock out this order to show
25 cause?

1 MR. GILLEN: Your Honor, I understood that the
2 Government in the first instance was opposing a hearing of
3 any sort, in my conversations with Mr. Cafnam. And that
4 this particular matter which we are on now was to determine,
5 for the Court to determine, whether I was entitled to a
6 hearing, and then I was going to be sent down another date
7 for a further hearing.

8 JUDGE RICCI: Mr. Gillen, I simply want to be sure
9 that I understand you. You used the word "hearing" in two
10 senses. This is a hearing. Exhibit No. 4--I have got it
11 marked as the answer by the doctor to the order to show
12 cause--requests a hearing. And because you requested it,
13 we are here. This is a hearing.

14 Now you say somebody told you you were going to
15 get a hearing. I do not understand. This is a hearing.
16 Are you saying--well, I do not want to put words in your
17 mouth. Try to answer me again. Maybe I am not making
18 myself clear. They say having proved the entry of a nolo
19 contendere plea in the district court to that indictment,
20 this man's registration as subject to Section 304(a)(2),
21 that such a nolo contendere plea is the equivalent of
22 "has been convicted of a felony." That is what they say.
23 They are either right or they are wrong. It is a question of
24 law.

25 When you say, "I am entitled to a hearing," I hear

1 you saying, "Really either they prove now in this hearing
2 that the doctor committed a crime or the plea of nolo
3 contendere is not enough." This is what I hear you saying.
4 Do I quote you correctly in substance?

5 MR. GILLEN: You do, Your Honor, but there is one
6 other step. In my conversations with the representative of
7 the Bureau of Narcotics and Dangerous Drugs, I thought it
8 was agreed between all parties, including the Hearing Judge,
9 that initially the question of law as to whether or not
10 the plea of nolo contendere per se would negate or obviate
11 a hearing, an evidentiary hearing, would be heard today,
12 and that at another date perhaps there would be--

13 JUDGE RICCI: Let me see if I understand you, if
14 I quote your position differently. Are you saying the
15 Government said to you, "We are satisfied. We have made our
16 case, having proved a nolo contendere plea," and I want that
17 question to go up to be decided. If we are wrong, then we
18 will try something else if we want to. But I want that
19 question decided now first? This is really the same thing
20 that Mr. Carnan said in the beginning, and that is how I
21 understood the pleadings initially. This is what a question
22 of law means. You simply take arguments; the briefs are
23 read, and citations have been given. That is the question.

24 My understanding, a coherent understanding of what
25 a hearing means, is at that point you close the hearing.

1 And whoever is sitting initially, trial judge, administrative
2 law judge, he writes what he thinks is the law. He makes a
3 report to the higher authority. In this case, I understand,
4 it is a director of the bureau. In another case it will be
5 to a higher court. And there is a review. Anyone who
6 disagrees with the position taken by the trial judge asks
7 for a reversal higher up. If the view that he takes stands
8 up, that is the end of the case.

9 If on appeal his view is knocked out, proves
10 wrong, the chips fall wherever they do and whoever gets
11 hurt reappraises his position and decides what to try next.
12 I have never understood a hearing to be anything but that.
13 And I think that is what you are saying to me. If I were
14 to say tomorrow on these documents--if you have any other
15 evidence, I will take that--if I were to say tomorrow in
16 writing I think a plea of nolo contendere is not the
17 equivalent of "has been convicted of a felony," I would
18 recommend that this order to show cause be dismissed and the
19 doctor be left alone.

20 In that event, the Government will appeal to
21 higher authorities, whoever they may be, and say, "Reverse
22 this. He is wrong."

23 If I were to say I think the Government is right,
24 you do not have to prove anything but prior nolo contendere,
25 nothing else is necessary, they have got a right to say he

1 has been convicted of a felony---I would make such a
2 recommendation to the director such a finding, my view.

3 In that event, you would go to the director and
4 say, "Reverse Ricci. He is wrong." And again the director
5 would decide.

6 With that, if I understand correctly, there is
7 really nothing else to listen to here at all. Does anybody
8 want to comment?

9 MR. GILLEN: May we have a slight recess?

10 JUDGE RICCI: By all means. Off the record.

11 [Discussion off the record.]

12 JUDGE RICCI: On the record. We left it that the
13 Government was going to object to the Registrant's
14 Exhibit No. 3.

15 MR. CARNAM: That is right, Your Honor.

16 JUDGE RICCI: With only this statement, that
17 justice is never hurt by taking more than is offered
18 rather than less. And I now receive into evidence
19 Registrant's Exhibit No. 3, with a clear statement that by
20 receiving it, I am not to be taken as ruling that it really
21 helps the doctor at all or that it changes the question
22 presented. In fairness, so that all the positions can be
23 appraised by any possible reviewing authority, I will
24 receive it for what it is worth.

25 [Registrant's Exhibit No. 3 for Identification

1 was received in evidence.]

2 JUDGE RICCI: Mr. Gillen, do you wish to add
3 anything else?

4 MR. GILLEN: No, Your Honor, just that I would
5 have the opportunity to submit a reply brief to the
6 Government, that is all.

7 JUDGE RICCI: By all means.

8 Now, if we make think in terms of how much time
9 to allow for it and also so the lawyers can give a final
10 thought before we close here, may we go off the record
11 another minute.

12 [Discussion off the record.]

13 JUDGE RICCI: Mr. Reporter, I now set December 10,
14 1978, as a time for filing briefs with the Administrative
15 Law Judge at the address I stated at the beginning. I will
16 welcome comment and legal analysis from anyone on a very
17 interesting and important question of law.

18 Does anyone wish to add anything else to this
19 record? [No response]

20 If not, thank you for your courtesy to me. The
21 hearing is closed.

22 [Whereupon, at 11:17 o'clock a.m. the hearing
23 was closed.]

24 - - -
25

DECISION AND RECOMMENDATION

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

IN THE MATTER OF:

MARTIN F. SOKOLOFF, M.D.
102-11 68th Drive,
Forest Hills, New York

Appearances:

Allyn Myles Carnam, Esq., for
the Department of Justice.
Michael J. Gillen, Esq., of
Grunewald, Turk and Gillen,
of New York City, for the
Respondent.

DECISION AND RECOMMENDATION

THOMAS A. RICCI, Administrative Law Judge: This is a proceeding instituted by the Drug Enforcement Administration of the Department of Justice, herein called the Department, pursuant to Section 304 of the Controlled Substances Act, 21 U.S.C. 824, aimed at the revocation of a registration (license) issued to Dr. Martin F. Sokoloff, of New York City, under Section 303 of the Controlled Substances Act, 21 U.S.C. 823. In response to the Department's Order to Show Cause issued on September 24, 1973, the Registrant requested a hearing under the Administrative Procedures Act, and the hearing was accordingly held at Washington, D.C., on November 19, 1973. All parties participated. Memoranda of Law were filed by both parties.

Dr. Sokoloff is a practicing physician. In common parlance, the registration in question that was issued to him permits him to stock, prescribe and dispense certain controlled drugs in the practice of his profession. Applicable law provides that criminal violation of Federal or State statutes regulating the use of such drugs by doctors so registered, exposes them to cancellation of the registration in certain circumstances. The pertinent laws read as follows:

Sec. 304(a) A registration pursuant to Section 303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant --

* * *

(2) has been convicted of a felony under this title or title III or any other law of the United States, or of any State, relating to any substance defined in this title as a controlled substance;

Findings of Fact

The following facts are established by documentary proof; no question was raised by any of the parties as to the authenticity of the documents received in evidence.

1. A controlled substances registration certificate was issued to Dr. Sokoloff on February 27, 1973.
2. On a date unspecified in this record, the Grand Jury of the United States District Court for the Eastern District of New York issued an indictment charging Dr. Sokoloff with nine counts of violations of Sections 841(a)(1), 842(a)(1) and 829(a) of the Federal Statutes. In pertinent part, each of the counts specifies that on certain dates, all in August and September of 1972, Dr. Sokoloff "knowingly and intentionally did distribute and dispense approximately . . . tablets of amphetamine sulfate, a Schedule II controlled substance."
3. On June 12, 1973, in that same Court, Dr. Sokoloff entered a plea of "nolo contendere" with respect to three of the nine counts listed in the indictment.
4. That same day United States District Judge Harold R. Tyler, Jr., issued a judgment based on that plea. He imposed a fine of \$250 for each of the three counts, and a 2-year suspended sentence, to run concurrently, for each such count.
5. On motion of the prosecution the remaining counts were dismissed.

After the above facts were placed in evidence by counsel for the Department, he rested, and argued that standing alone they constitute legal basis sufficient for revocation of the doctor's registration. The position rests squarely on the proposition that for purposes of Section 304 of the Controlled Substances Act, a plea of nolo contendere to a felony indictment, followed by judgment passed in the criminal courts, satisfies the statutory requirement "has been convicted of a felony" spelled out in that Section.

Counsel for the doctor takes square issue with this legal contention. He does not dispute the evidentiary proof that the crime alleged in the indictment fell within the area of the felonies referred to in Section 304(a)(2). He concedes punishment was imposed as spelled out in the written judgment placed in evidence; indeed he proved prompt payment by the registrant of the fine exacted by the District Court Judge. The defense argument is that a nolo contendere plea does not establish that the criminal defendant in fact violated any law, or was "convicted" of any wrongdoing. He offered to prove the doctor was completely innocent of the charges listed in the indictment, or at least to litigate the question with the Justice Department now. And of course each of the contending parties submitted case precedent said to support their respective positions.

I find that the nolo contendere plea in this case resulted in the substantial equivalent of a criminal conviction and that therefore the registrant's license may lawfully be revoked. The many decisions cited by the parties, largely in the Department's brief, and the countless cases discussed by reporting legal authorities found in libraries, show unending judicial discourse seemingly exalting words over reality. It seems as though determinations affecting the rights of individuals and the public are made upon the turn of a phrase, decided by a play on words. If the question presented here could be put at rest in so superficial a manner, there would be no problem at all, for the District Judge's

decision literally reads: "It is adjudged that the defendant upon his plea of nolo contendere . . . has been convicted of the offense. . . ."

In essence, the doctor's defense rests upon the unassailable contention that so long as a criminal defendant is permitted to choose between a plea of guilty and one of nolo contendere, a difference between the two there must be. And he draws the distinction, with support in some prior decisions found in other areas of human experience, between a "criminal" matter--which the District Court proceeding here certainly was, and a "civil" matter--which is only one of several pertinent adjectives that may be used to describe this case. Such emphasis upon the word civil to remove the nolo contendere plea from the area of criminal conviction, is justified, according to the registrant, by two decisions cited in his brief. In the first, one oil company, a private corporation, sued another oil company, also a private enterprise, for damages, on the ground that the first had violated the antitrust laws; it wanted money to be paid by the second--that is, into the coffers of the first corporation. Because the defendant there had "consented" to the antecedent federal proceeding under the Clayton Act, it was ruled the first oil company would have to prove that the second had in fact engaged in a commercial conspiracy. Twin Ports Oil Co. v. Pure Oil Co., 26 F. supp. 366. In the second case cited, the federal government sued to take title to an automobile away from the individual owner because it had been used in criminal violation of the Internal Revenue Code; the owner had pleaded nolo contendere in a criminal court and been sentenced to jail. On the question of whether the government could confiscate the car, the court ruled it was not enough that the owner had pleaded nolo contendere; the fact of violation of the Internal Revenue Code would have to be established by affirmative evidence then and there. U.S. v. One Chevrolet, 91 F. supp. 272.

In contrast, the Department cites a number of instances where a lawyer's license to practice his profession was suspended, or revoked, solely on the ground he had pleaded nolo contendere to a criminal offense. The precise language of disqualifying provisions applicable to lawyers' licenses, of course, does not necessarily compare with the critical statutory phrase here considered.

There appears to be a fundamental incoherence in the proposition, stated in more than one decisional precedent, that a fact--conduct violative of a criminal statute--can be a fact for purposes of one tribunal while simultaneously not be a fact for purposes of another court. Perhaps that is why the court, in the Twin Ports Oil Co. case cited above, suggested that "a consent judgment in a criminal case is an anomaly in legal parlance." In the circumstances it is best to base any decision upon the substance of things rather than descriptive language. The purpose of both the criminal statute for which this doctor was fined and sentenced to imprisonment--albeit a suspended sentence--and the license and revocation provisions of Section 303 and 304 of the Controlled Substances Act, is to protect the public, to guard the public health. That every criminal prosecution is in the public interest has long been beyond dispute. And nothing could be clearer than that the congressional concern which led to the Controlled Substances Act altogether, was realization that unlicensed and unsupervised production and distribution of drugs had become a danger to the population as a whole. Thus Section 303(b) cautions that when issuing a license the Attorney General must consider, among other things, "such other factors as may be relevant to and consistent with the public health and safety," and that he ought not issue it if "he determines that the issuance of such registration is inconsistent with the public interest."

A more logical classification of cases would be to speak of public as distinguished from private rights, or concerns. In the litigation between the two oil companies all that was involved was the possible transfer of so many dollars from one corporation to another. In the automobile case all that could happen was that the driver would lose his personal property--the car. Neither extration of the money from the oil company, nor confiscation of the auto from that driver, could have any effect upon the capacity of either defendant to repeat the offenses against the public interest for which they had previously been charged. Not so in the case of the doctor. The registration accorded him by the Justice Department is not to be compared with so many dollars, or any article of personal belonging. Rather, it is the very arrangement which made possible in the past, and could permit again in the future, his capacity to damage the public health and contravene the public interest. The statutory provision which makes issuance of the registration possible also expressly states the limitations which go hand in hand with the privilege to dispense the drugs. It is as though compliance with part of the provisions--that the registrant not violate the criminal laws--were a built-in continuing condition for the validity of the registration. To continue to dispense drugs to the public the doctor must refrain from violating the pertinent criminal laws. In the District Court he chose not to dispute the correctness of the grand jury indictment which alleged he did just that, and the cases speak of his plea as quite the equivalent of establishing those allegations as fact for purposes of his fine and imprisonment. To permit him, now that the very license which imposed the restriction against criminal conduct is a stake, to say it never happened, would make a mockery of the law.

Rational decision in this one case does not require, as a condition precedent, that all the cases involving a nolo contendere plea be reconciled and talked away. Indeed a single comparable precedent will suffice, a decision within the field of federal jurisdiction. Tseung Chu, a Chinese, entered the United States as a permanent resident; a necessary qualification was that he not have been convicted of a crime involving moral turpitude. In his application he said he had not been so convicted, but in fact he had earlier pleaded nolo contendere to a criminal tax evasion indictment. In the effort to avoid deportation, he argued he had done nothing wrong, or at least no one had ever proved he did anything wrong, and the government must start proving all over again anything it could about his alleged moral turpitude. The argument was rejected, his visa was cancelled, and he was deported. Tseung v. Cornell, 247 F. 2d 929 (C.A. 9), cert den. 355 U.S. 892. Whether the deportation proceeding be called a "civil" question, a "public" matter, or a "criminal" proceeding, is of little moment. / What counts is that the privilege of any one person to live in America, be an accepted and permanent member of this society, is of concern to all of us, is a question of public interest, and is not to be likened to the right to have so much money or one particular automobile.

Recommendation

I take the doctor's lawyer at his word when he said that total revocation of his client's registration means effective curtailment of his capacity to practice the medical profession. Section 304, above, provides that the Attorney General "may" revoke a registration in the event of a conviction; clearly it does not mandate that total action.

/ In the Tseung case itself, the Court distinguished substantially between a money-recovery case and a public interest concern, by (Continued)

This means the issuing authority is empowered to exercise discretion within the proper ambit of its expertise. No two cases are alike, and this one too, therefore, deserves to be appraised in its total coloration, with proper consideration of all relevant facts.

Absent evidence to the contrary, it is only fair to assume this was the doctor's first offense. The three separate incidents of violations of law as to which he stands convicted, all occurred within an 11-day period in August of 1972, and all involved the improper dispensation of a single drug--amphetamine sulfate. The law correctly holds him accountable for these derelictions. But justice also dictates that the other six counts listed in the indictment, which were dismissed at the prosecutor's request, not be weighed in the balance against the accused. The presumption of innocence applies no less partially than it does to a total indictment dismissed.

/ (Continued) commenting, as dicta in the case, that the nolo contendere plea would not suffice, standing alone, to support a money judgment for wrongfully unpaid income taxes.

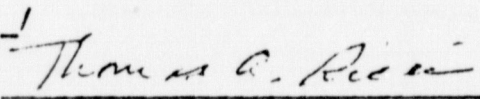
It is also not inappropriate to give some weight to the valued judgment of the District Court judge. He participated in the discussion that preceded the nolo contendere plea, and in the process no doubt learned more of the details of the criminal case than is shown on this record. The official transcript of the formal proceeding that then followed was placed in evidence here, and it leaves no doubt that in the judge's opinion a 2-year limitation upon the doctor's privilege to stock amphetamine in his office was sufficient to give reasonable promise of full compliance with the law thereafter. Indeed, the judge's final words to the defendant were to wish him well in his resolve to continue his medical practice honorably.

And finally, Section 304 itself literally reveals a congressional intent that the administrative hand of government not exact the full measure of judicial retribution in each and every case. Section 304(b) reads as follows:

"The Attorney General may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist."

I respectfully recommend that the Attorney General not revoke the registration certificate in this case. ¹

Washington, D.C.
December 11, 1973


Thomas A. Ricci
Administrative Law Judge

/ "But whenever the offense inspires less horror than the punishment, the rigour of penal law is obliged to give way to the common feelings of mankind." Edward Gibbon, Decline and Fall of the Roman Empire, Chapter XIV.

A

REGISTRANT NAME AND ADDRESS

SOKOLOFF, MARTIN MD
103 11 68TH DRIVE
FOREST HILLS, N.Y.

11375

MAIL TO

UNITED STATES
DEPARTMENT OF JUSTICE
BUREAU OF NARCOTICS
AND DANGEROUS DRUGS
P.O. BOX 28083
CENTRAL STATION
WASHINGTON, D.C. 20005

APPLICATION FOR REGISTRATION
UNDER
CONTROLLED SUBSTANCES ACT OF 1970

PLEASE PRINT OR TYPE ALL ENTRIES
CORRECT NAME OR ADDRESS APPEARING HEREON IF
NECESSARY

BND
REGISTRATION
NUMBER AS0725828

YOUR CURRENT
REGISTRATION
EXPIRES ON 02-28-74

IMPORTANT: THE ORIGINAL OF THIS
APPLICATION, WITH FEE, SHOULD BE MAILED
TO BND 45 DAYS PRIOR TO EXPIRATION DATE
APPEARING HEREON.

REGISTRATION CLASSIFICATION: SUBMIT CHECK OR MONEY ORDER PAYABLE TO THE BUREAU OF NARCOTICS & DANGEROUS DRUGS IN AMOUNT OF \$5.00 NO STAMPS.

1. BUSINESS ACTIVITY (Check ☒ one only. READ NOTE BEFORE COMPLETING.)

A ☐ RETAIL PHARMACY B ☐ HOSPITAL/CLINIC C ☒ PRACTITIONER

(Specify: MD, DO, DDS, DVM, etc.)

TEACHING INSTITUTION
☐ Instructional purpose only

FEE MUST
ACCOMPANY
APPLICATION

2. DRUG SCHEDULES (Check ☒ all applicable)

1 ☒ SCHEDULE II NARCOTIC 2 ☒ SCHEDULE II NONNARCOTIC 3 ☒ SCHEDULE III NARCOTIC 4 ☒ SCHEDULE III NONNARCOTIC 5 ☒ SCHEDULE IV 6 ☒ SCHEDULE V

3. ☐ (E) CHECK THIS BLOCK IF INDIVIDUAL NAMED HEREON IS A FEDERAL, STATE
OR LOCAL OFFICIAL. IF CHECKED, ALSO COMPLETE ITEM 5.

4. ALL APPLICANTS MUST ANSWER THE FOLLOWING:

(a) Are you currently authorized to prescribe, distribute, dispense, conduct research, or otherwise handle the controlled substances in the schedules for which you are applying, under the laws of the state or jurisdiction in which you are operating or propose to operate?

☒ YES ☐ NO

CURRENT STATE LICENSE
OR CERTIFICATE NUMBER

N.Y. 79403

(b) Has the applicant been convicted of a felony under state or federal law relating to the manufacture, distribution or dispensing of controlled substances?

☐ YES ☒ NO

(c) Has any previous registration held by the applicant, corporation, firm, partner, or officer of the applicant under the CSA been surrendered, revoked, suspended, denied or is it pending such action?

☐ YES ☒ NO

If YES, attach a letter setting forth the circumstances of such action.

SIGN
HERE

Signature of applicant or authorized individual

Date

Title (If the applicant is a corporation, institution, or other entity, enter the TITLE of the person signing on behalf of the applicant (e.g., President, Dean, Procurement Officer, etc.))

5. CERTIFICATION OF EXEMPT OFFICIAL (Complete only if item 3 is checked)

ONLY OFFICERS, EMPLOYEES AND AGENCIES OF FEDERAL, STATE, OR LOCAL GOVERNMENTS ARE EXEMPT FROM PAYMENT OF REGISTRATION FEES.

(a) Name of government unit by whom applicant is employed or of which agency is a part (e.g., U.S. Public Health Service, Texas Department of Mental Health, Ohio State University, King's County Hospital, Dallas City Health Clinic, etc.)

5. CERTIFICATE OF EXEMPT OFFICIAL (Complete)

(b) Is the official whose signature appears in item 4 authorized to obtain from official stocks, dispense, administer, conduct research, instructional activities or chemical analyses with controlled substances?

☐ YES ☐ NO

(c) Is he authorized to purchase controlled substances?

☐ YES ☐ NO

Signature of applicant certifying officer

Date

Official Title of applicant certifying officer

WARNING:

SECTION 843 (a) (4) OF TITLE 21, UNITED STATES CODE, STATES THAT ANY PERSON WHO KNOWINGLY OR INTENTIONALLY FURNISHES FALSE OR FRAUDULENT INFORMATION IN THIS APPLICATION IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN FOUR YEARS, A FINE OF NOT MORE THAN \$30,000.00 OR BOTH.

NOTE: Registration as a teaching institution authorizes purchase and possession of controlled substances for instructional purposes only. Practitioners, teaching institutions or individuals within teaching institutions desiring to conduct research with any Schedule I substance or any Schedule II through V narcotic substance must obtain a "Researcher" registration by submitting Form BND 225 with applicable fee.

RETURN THIS COPY WITH \$5.00 FEE, IF APPLICABLE AND KEEP CARBON COPY FOR YOUR RECORDS

63a

RIDER TO APPLICATION FOR REGISTRATION

UNDER CONTROLLED SUBSTANCES ACT OF 1970

With respect to Item 4 (a) through (c), it is applicant's position, upon advice of counsel, that he has not been convicted of a felony within the meaning of the question asked. Applicant had, as a matter of public record, entered a plea of "Nolo Contendere" to a charge, under indictment 72 CR 1215, in the Eastern District of New York, before United States District Judge Harold Tyler, which charge alleged a violation of 21 U.S.C. 841(a) (1), 842 (a) (1), 829(a).

At the time of sentencing, applicant's sentence was suspended, and a fine of \$750.00 was imposed.

Subsequently, the U. S. Department of the Treasury, Drug Enforcement Administration brought a proceeding to revoke the applicant's registration and a hearing was held at Washington, D. C. on November 19, 1973, before the Hon. Thomas A. Ricci, Administrative Judge. Judge Ricci found in favor of the applicant on December 11, 1973. (See copy of Judge Ricci's decision annexed).

If any further information is required in support of this application, kindly contact the applicant.

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. 73-22]

MARTIN F. SOKOLOFF**Revocation of Certificate of Registration**

On September 24, 1973, the Administrator of the Drug Enforcement Administration (the successor agency to the Bureau of Narcotics and Dangerous Drugs), issued an order to show cause to Martin F. Sokoloff, M.D., 103-11 Sixty-eighth Drive, Forest Hills, New York 11375, as to why his Certificate of Registration (BNDD Registration AS0725828), issued on February 27, 1973, should not be revoked for the reason that "• • • on June 12, 1973, in the United States District Court for the Eastern District of New York • • • [he] pleaded nolo contendere to three counts of knowingly and intentionally distributing and dispensing

certain Schedule II controlled substances in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 842(a)(1) • • •." These violations related to felony provisions of Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (the Controlled Substances Act).

On October 15, 1973, the Respondent requested a hearing on the matter, and on November 19, 1973, an Administrative Hearing was held before Thomas A. Ricci, Administrative Law Judge, in Washington, D.C. Following that hearing, Proposed Findings of Fact and Conclusions of Law were submitted to Judge Ricci by both counsel for the Government and the Respondent.

On December 11, 1973, Judge Ricci filed with the Drug Enforcement Administration his findings of fact, conclusions of law, and recommended decision.

Judge Ricci's findings of fact may be summarized as follows:

1. Dr. Sokoloff was issued a Certificate of Registration on February 27, 1973.
2. A federal grand jury in the Eastern District of New York returned a nine count indictment charging that in August and September of 1972 Dr. Sokoloff knowingly and intentionally distributed and dispensed amphetamine sulfate tablets in violation of sections 841(a)(1), 842(a)(1), and 829(a) of the Controlled Substances Act.
3. On June 12, 1973, Dr. Sokoloff entered a plea of nolo contendere to three of the nine counts; the remaining six were then dismissed on the Government's motion.
4. On each of the three counts Dr. Sokoloff was fined \$250 and given a two year suspended sentence all to run concurrently.

Judge Ricci's conclusions of law may be summarized as follows:

1. The nolo contendere plea "resulted in the substantial equivalent of a criminal conviction" and "therefore the registrant's license may lawfully be revoked".
2. The purpose of both the criminal statute under which Dr. Sokoloff was fined and received a suspended sentence, and the revocation provisions of sections 303 and 304 of the Controlled Substances Act "is to protect the public, to guard the public health".
3. "Nothing could be clearer than that the congressional concern which led to the Controlled Substances Act altogether, was realization that unlicensed and unsupervised production and distribution of drugs had become a danger to the population as a whole."
4. Section 303(b) of the Controlled Substances Act required that when registering an applicant (other than a practitioner) the Attorney General must consider such factors "relevant to and consistent with the public health and safety"; that the Attorney General should not register an applicant if "he determines that the issuance of such registration is inconsistent with the public interest".
5. The registration issued to Dr. Sokoloff was "the very arrangement which made

possible in the past, and could permit again in the future, his capacity to damage the public health and contravene and public interest".

It can fairly be said that Judge Ricci's findings of fact and conclusions of law are in agreement with the positions taken by DEA at the hearing and that they express accurately the predicate for issuance of the Order to Show Cause.

Having said this we turn to the Judge's recommended decision. He writes "I respectfully recommend that the Attorney General not revoke the registration certificate in this case".

Judge Ricci's reasons for his recommended decision may be summarized as follows:

1. Total revocation of Dr. Sokoloff's registration means "effective curtailment of his capacity to practice the medical profession".
2. Section 304 provides that the Attorney General "may" revoke a registration. It does not "mandate" that action.
3. "It is only fair to assume" that this was Dr. Sokoloff's first offense.
4. The six counts of the indictment which were dismissed on the government's motion should not be weighed against Dr. Sokoloff. The presumption of innocence applies to these counts.
5. A provision of Dr. Sokoloff's two-year probation was that he not stock amphetamines in his office during that time. This "leaves no doubt" that in the court's opinion the restriction gave "reasonable promise of full compliance with the law thereafter".

In light of the findings and conclusions, extended discussion of the recommended decision is not required. However, some comment on the stated reasons for the recommendation would appear to be in order.

1. We agree that total revocation of a physician's registration seriously curtails his capacity to practice medicine. We note in addition that, as to a physician who has been convicted of the illegal sale of highly dangerous drugs, revocation also serves seriously to curtail his capacity to continue breaking the law and in the process to destroy human lives.

2. We agree that revocation is not mandatory but suggest there is no hint of arbitrary action in revoking a physician's registration following his conviction for three illegal sales of highly dangerous drugs.

3. The Drug Enforcement Administration never charged that Dr. Sokoloff had committed previous offenses. It is our view that the offenses which he did commit are sufficient to justify administrative action.

4. As to the six counts dismissed on the government's motion, we point out this is a customary practice following a plea of guilty or nolo contendere by a defendant to other counts. We are obliged to indulge the presumption of innocence as to these six counts but question what substantive significance is derived therefrom.

5. The provision of Dr. Sokoloff's probation (that he not stock amphetamines in his office for two years) leaves no doubt that the sentencing judge did not entirely trust the doctor to deal correctly with amphetamines were he tempted by their physical presence. Moreover, in imposing sentence the judge stated, "this court can make no assurances either with respect to what a Federal agency might do. A Federal administrative agency, for example, might initiate proceedings against you with respect to these three dispensations of amphetamines. I just don't

know what they are liable to do." (Registrant's Exhibit 1)

Summarizing the court's position, it did not trust Dr. Sokoloff to possess a supply of amphetamines and it left to DEA the judgment as to whether that limitation was sufficient to meet the total problem. We concur in the court's finding that the doctor should not be trusted to possess the exact type of drugs which he sold illicitly and find no reason to assume that he could better be trusted to possess other Schedule II drugs such as certain barbiturates, methaqualone, and cocaine. Since our experience has demonstrated that the illicit sale of prescriptions is as inimical to the public health and safety as the illicit sale of the actual drugs they represent, we merely extend the sentencing court's position by proscribing prescribing, as well as selling, of the most dangerous drugs. This extension is consistent with the court's view that its sentence left future administrative action open and unencumbered.

In the circumstances of this case it would be entirely proper for DEA to terminate absolutely Dr. Sokoloff's ability to dispense or distribute controlled substances. However, since the sentencing court desired that Dr. Sokoloff be permitted to continue in practice, the fullest range of administrative sanctions will not be imposed.

Therefore, in accordance with the provisions of 21 CFR 1316.66, and in view of the foregoing, it is the Administrator's opinion that the Respondent, Martin F. Sokoloff, M.D., was convicted of a drug related felony violation of Federal law, namely the unlawful distribution of controlled substances.

Accordingly, under the authority vested in the Attorney General by section 304 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 824), and redelegated to the Administrator of the Drug Enforcement Administration by 28 CFR § 0.100 as amended, and Reorganization Plan Number 2 of 1973, the Administrator hereby orders that the Certificate of Registration of Martin F. Sokoloff, M.D. (BNDV Registration AS0725828) be, and hereby is, revoked, effective February 8, 1974.

Should Dr. Sokoloff apply for another Certificate of Registration prompt consideration will be given to the granting of such application limited to Schedules III, IV, and V of the Controlled Substances Act.

Dated: February 4, 1974.

JOHN R. BARTELS, Jr.
Administrator, Drug
Enforcement Administration.

[F.B. Doc. 74-3138 Filed 2-7-74; 8:45 am]



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UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
Washington, D.C. 20537

MAR 5 1974

Michael J. Gillen, Esquire
16 Court Street
Brooklyn, New York 11241

RE: Martin F. Sokoloff, M.D.
Docket No. 73-22

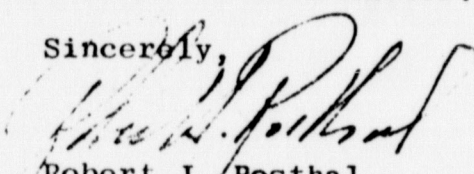
Dear Mr. Gillen:

This is in reply to your letter of February 21, 1974, requesting a Stay of Execution of the Final Order rendered in the above captioned matter. This Order revoked the Certificate of Registration of Dr. Sokoloff, thereby removing his authorization to dispense, possess or otherwise handle controlled substances during the course of his professional practice.

In his Order, the Administrator of the Drug Enforcement Administration set forth in detail his reasons for revoking Dr. Sokoloff's DEA Registration. In short, this action was taken because the Administrator felt that if your client retained his Schedule II controlled substance privileges, there would be a danger to the public health and safety. It should be noted that if Dr. Sokoloff should apply for a Certificate of Registration, the Drug Enforcement Administration shall give prompt consideration to the granting of such Application for controlled substances listed in Schedules III, IV and V.

Therefore, we cannot honor your request for suspending the execution of the Final Order in this matter.

Sincerely,


Robert J. Rosthal
Deputy Chief Counsel

March 8, 1974

Hon. John R. Bartels, Jr.
Administrator
Drug Enforcement Administration
Department of Justice
Washington, D.C. 20537

Attention: Allyn Myles Carnam, Esq.

Re: Martin F. Sokoloff, Petitioner against William
Saxbe, et. al.

Dear Sir:

Although orally advised of its existence, we have not as of this date, received any formal denial of our request for a stay pending determination of the Petition on Review.

It is urged that you reconsider our request for a stay. Attached hereto, is a letter (dated February 28, 1974) from the petitioner to our firm, with respect to the needs of a physician as to Class II and other drugs. It should be noted that in addition to the exposure to mal practice, the emergency functions of a physician are literally precluded by his failure to have available those drugs needed for emergency treatment.

Since the Doctor has been practicing medicine from the onset of his difficulties until the present time, surely no harm can be done if he abides by the District Court's admonition merely to prescribe amphetamines instead of stocking them, and without restrictions as to the utilization of medical drugs essential to a general practice of medicine.

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This letter will also acknowledge your representation that the Doctor's application for the issuance of a Certificate of Registration has been mislaid by your agency. I urge that you forward a new application immediately, so that we may re-apply.

Your prompt acknowledgment of this letter and the additional request for a stay will be most appreciated.

Very truly yours,

Raymond Bernhard Grunewald

RBG/eb

M. F. SOKOLOFF, M.D., P.C.
103-11 68TH DRIVE (CORNER QUEENS BLVD.)
FOREST HILLS, NEW YORK 11375
TELEPHONE TW 7-9750

February 28, 1974

Mr. Raymond Grunewald
Grunewald, Turk & Gillen
16 Court Street
Brooklyn, New York 11241

Dear Mr. Grunewald:

As per our conversation, this is an explanation of what I need and do not need in the below classifications.

Class II

There is no substitute for Morphine, Demerol and Dilaudid. These drugs are needed by me for treating severe trauma (severe disabling sprains) such as low back, fractures, heart attacks, kidney stone attacks, gall bladder attacks, cancer, burns of the skin, obstetrical care, post and pre-operative orders. In handling emergency calls, I may run into the need for Morphine, Demerol, and Dilaudid for use as described above.

I would be exposed to mal practice litigation by not having the privilege of administering Morphine to a heart attack patient who as a result of this might die. In addition, since a doctor is judged with respect to other physicians, I would in essence be performing substandard medicine.

Tincture of opium drops are the most useful symptomatic treatment for severe diarrheas. I do not need to prescribe amphetamines or (Parest and Quaalude - sleeping pills) methaqualone as in my opinion they can be effectively replaced by less controlled medicines and by the Barbituates, Class II.

Barbituates (Nembutal, Seconal and Tuinal) are frequently the medicines of choice for safely treating the sleeping problems of older people. Epilepsy, for all age groups, has for decades been treated with Barbituates.

Class III

Emprin with Codeine is most useful in treating mild to moderate pain and for suppressing coughs. Hycomine is an excellent and widely used cough medicine.

Class IV

The non-amphetamine diet pills (Ionamine, Tepanil and Tenuate) are useful adjuncts along with diet for preventing and treating obesity and its complications - high blood pressure and shortened life span. Miltown (Meprobamate) the oldest tranquilizer is still useful and needed in controlling anxieties often seen in today's stressful life, thus controlling and preserving productive functionings otherwise often lost.

Class V

Cough Medicines with Codeine have been and still are a standard and useful medicine for decades. Lomotil an antidiarrhea medicine has no substitute in treating uncontrolled, moderate diarrheas.

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UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

-----x
MARTIN F. SOKOLOFF,

Petitioner,

PETITION FOR REVIEW

-against-

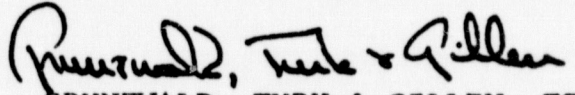
WILLIAM SAXBE, Attorney General of the
United States and JOHN R. BARTELS, JR.,
Administrator, Drug Enforcement Adminis-
tration of the Department of Justice,

Respondents.

-----x

MARTIN SOKOLOFF, a physician maintaining his principal place of business within this Circuit, hereby petitions this Court, pursuant to §877, Title 21, U.S.C., for a review of the Order of JOHN R. BARTELS, JR., Administrator, Drug Enforcement Administration of the Department of Justice, wherein a Certificate of Registration issued by the Bureau of Narcotics and Dangerous Drugs to MARTIN SOKOLOFF was revoked, the said Order dated February 4, 1974 to become effective February 8, 1974, upon the grounds that such action was contrary to law and the findings and recommendations of the Administrative Law Judge, and without authority, and such other grounds as shall be appropriate under the circumstances.

Dated: Brooklyn, New York
March 8th, 1974.


GRUNEWALD, TURK & GILLEN, ESQS.
Attorneys for Petitioner
Office and P. O. Address
16 Court Street
Brooklyn, New York 11241

TO: HON. WILLIAM SAXBE
Attorney General of the United States
Washington, D. C. 20537

HON. JOHN R. BARTELS, JR.
Administrator,
Drug Enforcement Administration
Department of Justice
Washington, D. C. 20537

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APPLICANT NAME (Last, First, Middle. If an individual)

RETAIN COPY 3. MAIL COPIES 1 AND 2 WITH FEE TO ADDRESS ABOVE.

**APPLICATION FOR REGISTRATION
UNDER
CONTROLLED SUBSTANCES ACT OF 1970**

Sokoloff, Martin, M.D.

BUSINESS ADDRESS (Do not use P.O. Box)

103 11 68th Drive

Forest Hills,

N.Y.

11375

CITY

STATE

ZIP CODE

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF NARCOTICS AND DRUGS

PLEASE PRINT OR TYPE ALL ENTRIES

THIS BLOCK FOR
BND-225 USE ONLY

REGISTRATION CLASSIFICATION: SUBMIT CHECK OR MONEY ORDER PAYABLE TO THE BUREAU OF NARCOTICS & DANGEROUS DRUGS IN AMOUNT OF \$5.00. NO STATE FEES.

1. BUSINESS ACTIVITY: Check ☒ one only. READ NOTE BEFORE COMPLETING. (Specify MD, DO, DDS, DVM, etc.)

A ☐ RETAIL PHARMACY

B ☐ HOSPITAL CLINIC

C ☒ PRACTITIONER

D ☐ TEACHING INSTITUTION
(Instructional purposes only)

2. DRUG SCHEDULES (Check ☒ all applicable.)

SCHEDULE II
1 ☒ NARCOTIC

SCHEDULE II
2 ☒ NONNARCOTIC

SCHEDULE III
3 ☒ NARCOTIC

SCHEDULE III
4 ☒ NONNARCOTIC

SCHEDULE IV
5 ☒

3. ☐ (E) CHECK THIS BLOCK IF APPLICANT IS EXEMPT FROM PAYMENT OF REGISTRATION FEE: IF CHECKED, ALSO COMPLETE ITEM 8.

N/A

4. ☒ (Y) CHECK HERE IF YOU REQUIRE ORDER FORMS.

5. ALL APPLICANTS MUST ANSWER THE FOLLOWING:

(a) Are you currently authorized to manufacture, distribute, dispense, prescribe, conduct research, or otherwise handle the controlled substances in the schedules for which you are applying, under the laws of the state or jurisdiction in which you are operating or propose to operate?

☐ YES

☒ NO

(b) Has the applicant been convicted of a felony under state or federal law relating to the manufacture, distribution or dispensing of controlled substances?

☒ YES

☐ NO

(c) Has any previous registration held by the applicant, corporation, firm, partner, or officer of the applicant under the CSA been surrendered, revoked, suspended, denied or is it pending such action?

☒ YES

☐ NO

IF YES, attach a letter setting forth the circumstances of such action.

6. CURRENT STATE
LICENSE OR
CERTIFICATE NO.

N.Y. 79408

7. SIGN
HERE

Signature of applicant or authorized individual

Date

Title (If the applicant is a corporation, institution, or other entity, enter the TITLE of the person signing on behalf of the applicant (e.g., President, Dean, Procurement Officer, etc.))

8. CERTIFICATION OF EXEMPTION (Complete only if item 3 is checked)

ONLY OFFICERS, EMPLOYEES AND AGENCIES OF FEDERAL, STATE, OR LOCAL GOVERNMENTS ARE EXEMPT FROM PAYMENT OF REGISTRATION FEES.

(a) Name of governmental unit by whom applicant is employed (e.g., U.S. Public Health Service, Iowa Department of Mental Health, King's County Hospital, Dallas City Health Clinic, etc.)

(b) Is the person whose signature appears in item 7 authorized to stock, dispense, administer, conduct research, instructional purposes with controlled substances?

☐ YES

☐ NO

(c) Is he authorized to purchase controlled substances?

☐ YES

Signature of applicant's certifying superior

Official Title of applicant's certifying superior

WARNING: SECTION 843 (a) (4) OF TITLE 21, UNITED STATES CODE STATES THAT ANY PERSON WHO KNOWINGLY OR INTENTIONALLY FURNISHES FALSE OR FRAUDULENT INFORMATION IN THIS APPLICATION IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN FOUR YEARS, A FINE OF NOT MORE THAN \$30,000.00 OR BOTH.

NOTE: Registration as a teaching institution authorizes purchase and possession of controlled substances for instructional purposes only. Practitioners, teaching individuals within teaching institutions desiring to conduct research on a controlled substance, or any Schedule II through V narcotic substance must obtain registration by submitting Form BND-225 with applicable fee.

RETAIN COPY 3. MAIL COPIES 1 AND 2 WITH FEE TO ADDRESS ABOVE.

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RIDER TO APPLICATION FOR REGISTRATIONUNDER CONTROLLED SUBSTANCES ACT OF 1970

With respect to Items 5(a) through (c), it is applicant's position, upon advice of counsel, that he has not been convicted of a felony within the meaning of the question asked. Applicant has, as a matter of public record, and as known to the Bureau of Narcotics and Dangerous Drugs, entered a plea of "Nolo Contendere" to a charge, under Indictment 72 CR 1215 in the Eastern District of New York, before United States District Judge Harold Tyler, which charge alleged a violation of §§841(a) (1), 842(a) (1), 829(a), Title 21, U.S.C. Pursuant to that conviction, applicant's sentence was suspended, a minimal fine of \$750.00 was imposed, and, in essence, the Court indicated no reason why applicant could not continue to practice, including the dispensing of narcotic as well as non-narcotic drugs.

Subsequently, the Drug Enforcement Administration, United States Department of Justice, brought a proceeding to revoke applicant's registration. A hearing was held at Washington, D.C. on November 19, 1973 before Administrative Law Judge Thomas A. Ricci. Judge Ricci, in essence, found in favor of the applicant with respect to prescribing narcotic, as well as non-narcotic drugs. (See decision dated December 11, 1973)

A timely application for Registration was forwarded on or about January 16, 1974, prior to the expiration of Certificate of Registration BNDD, Registration AS0725828. Applicant has been subsequently informed through counsel, that this timely application has not been located to date at the recipient's office. (A photocopy of the original application and rider is attached hereto)

In the intervening time, the Administrator, Drug Enforcement Administration, has seen fit to revoke the applicant's registration, effective February 8, 1974, with the proviso,

"Should Dr. Sokoloff apply for any Certificate of Registration, prompt consideration will be given to the granting of such application, limited to Schedule III, IV, and V of the Controlled Substances Act."

- 2 -

A timely request for a stay of revocation has been denied by the Administrator.

On March 8, 1974, a Petition for Review was duly filed with the Circuit Court of Appeals for the Second Circuit, and with the Administrator, Drug Enforcement Administration.



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UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
Washington, D.C. 20537

MAR 11 1974

Raymond B. Grunewald, Esquire
16 Court Street
Brooklyn, New York 11241

RE: Martin F. Sokoloff, M.D.
Forest Hills, New York

Dear Mr. Grunewald:

This is to confirm a telephone conversation of even date regarding the pending Application for Registration, under the Controlled Substances Act, as a practitioner, of your client, Martin F. Sokoloff, M.D.

This Application, which was executed on March 11, 1974, by Dr. Sokoloff, contains a request for registration in Schedules II, III, IV and V. As you know, on February 8, 1974, the Administrator of the Drug Enforcement Administration issued a Final Order revoking Dr. Sokoloff's DEA Registration AS0725828. This revocation was directed at each of the four Schedules in which Dr. Sokoloff was then registered; namely, Schedules II, III, IV and V.

The last paragraph of this Final Order, however, reads as follows:

Should Dr. Sokoloff apply for another Certificate of Registration prompt consideration will be given to the granting of such application limited to Schedules III, IV and V of the Controlled Substances Act.

Notwithstanding, and although for the reasons we discussed during our telephone conversation, Dr. Sokoloff did submit a Application for Registration in Schedules II-V. DEA will not be able to process this Application unless you submit, on behalf of your client, a request modifying the Application for Registration, deleting Schedule II. Such a modification, if submitted, will be received in accordance with the provisions of Section 301.37(a), Title 21, Code of Federal Regulations.

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Finally, as requested in our telephone conversation, would you kindly submit a check in the amount of five-dollars, made payable to the Drug Enforcement Administration, so that the March 11 Application can be processed without any further delay. Per our conversation, please find enclosed the draft, made payable to the Bureau of Narcotics and Dangerous Drugs, submitted by Dr. Sokoloff, with his January 16, 1974 Application.

Very truly yours,



Allyn Myles Carnam
Attorney

Enclosure

CONTROLLED SUBSTANCES REGISTRATION CERTIFICATE
UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF NARCOTICS AND DANGEROUS DRUGS
WASHINGTON, D.C. 20005

The Controlled Substances Act of 1970 reads in part as follows:

10. The Appellee's Attorney has provided a letter dated 2/1/10, in which the Appellee's Attorney stated that the Appellee's Attorney has been advised by the Attorney General that the Appellee's Attorney is not permitted to provide any further information regarding the Appellee's Attorney's representation of the Appellee.

2. The provisions of this law, including the provisions relating to any other law of the United States or of any State relating to any substance that is not a tobacco or tobacco-related product or

[illegible]BNI D REGISTRATION
NUMBER

AS0725828

SCHEDULE 5

3, 3N, 4, 5

THIS REGISTRATION
EXPIRES

2/28/73

BUSINESS ACTIVITY

PRACTITIONERFEE
PAID

\$5.00

DATE ISSUED

4/2/74

FACSIMILE

SOKOLOFF, MARTIN
103 11 68TH DRIVE
FOREST HILLS, NEW YORK

11375

THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY.

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

..... Monroe Rosen being duly sworn, says that on the 20th day
of May, 1974, he served 2 copies of the annexed Mittelman's Affidavit upon
Chas. R. Bartels, Jr. Esq., the attorney for the Respondents herein
by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at 150 Christopher
Street, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United
States in said city directed to the said attorney at NO. Drug Enforcement Administration - Dept. of Justice
Borough of Washington, D.C., ~~City of New York~~, being the address within the State therefore designated by
him for that purpose.

Monroe Rosen

Sworn to before me, this

20th day of May, 1974.

William C. Winkler
Notary Public, State of New York
No. 31-9704765
Qualified in New York County
Commission Expires March 30, 1976

Service of three (3) copies of the within
is hereby admitted

this day of

.....
Attorney(s) for

/

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